

ASSEMBLY BILL 588

INSERT

1 195.12, 195.13, 195.14, 195.15, 195.16, 195.19 (title), 195.19 (2), 195.21, 195.26,
2 195.27, 195.286 (6) (title), 195.286 (7), 195.34, 195.35 (1), 195.36, 195.37 (title),
3 195.37 (1), 195.38, 195.50, 195.60 (title), 195.60 (1), 195.60 (2), 195.60 (3),
4 195.60 (4) (a), 195.60 (5), 197.10 (4), 201.01 (1), 201.01 (2), 201.13, 706.05 (2m)
5 (b) 2. and 706.09 (3) (a); and *to create* 182.018 (4), 189.02 (2m), 190.005,
6 191.001 (2), 191.001 (3), 192.005, 192.145, 195.02 (4m), 195.04 (1m) and 195.28
7 (5) of the statutes; **relating to:** repealing provisions that may be inconsistent
8 with federal law of and modernizing chapters 189 to 192 and 195 and other
9 provisions related to railroad regulation and providing a penalty.

ANAL

Analysis by the Legislative Reference Bureau

Under federal law, the jurisdiction of various federal agencies is exclusive as to certain operational aspects of rail carriers on interstate rail networks and as to certain aspects of railroad safety. Federal law preempts state law with respect to these matters, even when the activity appears confined to this state. This bill repeals many provisions of state law that may be inconsistent with federal law and also modernizes certain provisions of state law.

FEDERAL REGULATION OF RAILROADS

Federal economic regulation of rail carriers began in the United States with the Interstate Commerce Act of 1887, which created the Interstate Commerce Commission (ICC) to administer the regulation of railroad rates and practices. The ICC was later charged with additional responsibilities, including regulating railroad line construction, mergers, carrier practices, and line abandonments. The ICC also administered all federal rail safety requirements until the U.S. Department of Transportation (USDOT) was created in 1966. The Federal Railroad Safety Act of 1970 (FRSA) gave the USDOT broad powers to promote safety in all areas of railroad operations and the Federal Railroad Administration (FRA), within the USDOT, exercises primary authority over rail safety and safety standards. The Staggers Rail Act of 1980 (Staggers Act) substantially limited economic regulation of rail carriers and removed many regulatory restraints on the railroad industry, including limiting the authority of the ICC to regulate rates to certain traffic and allowing private railroad-shipper contracts in lieu of fixed tariffs. The FRSA was replaced by the Federal Railroad Safety Authorization Act of 1994 (FRSAA), the stated purpose of which is to promote safety in every area of railroad operations and reduce railroad-related accidents and incidents. The Interstate Commerce Commission Termination Act of 1995 (ICCTA) continued economic deregulation that began under the Staggers Act, eliminating many restrictions on rail carriers, abolishing the ICC,

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and transferring some ICC functions to the newly created federal Surface Transportation Board (STB) to administer more limited regulatory responsibilities.

The ICCTA's significant economic deregulation of railroads applies to both interstate and intrastate rail transportation and impacts railroads not only on a federal level but also significantly preempts certain areas of state regulation of railroads. Under the ICCTA, the STB maintains exclusive jurisdiction over those aspects of rail carrier transportation related to: rail carrier rates and classifications; rail carrier operating rules and practices, including rules related to the use, control, supply, movement, and interchange of locomotives, rolling stock, and other equipment; rail carrier routes, services, and facilities; and the construction, acquisition, operation, abandonment, and discontinuance of industrial and side tracks and facilities, even if the tracks and facilities are located entirely in one state. The ICCTA specifically preempts state regulation of rail transportation with respect to these matters. The STB's jurisdiction extends to both interstate rail transportation and intrastate rail transportation that is part of the interstate rail network. The STB's jurisdiction applies to rail carriers, which means those providing common carrier railroad transportation of property or persons for compensation, and includes all related services and facilities but does not include, with certain safety exceptions, mass transit or street, suburban, or interurban electric railways not operated as part of the general system of rail transportation. Some areas of broad and exclusive authority conferred on the STB under the ICCTA include: rail carrier corporate and facilities transactions, such as mergers and acquisitions of rail carriers and other "control" transactions, line sales, and agreements between rail carriers to use each other's tracks or facilities; freight rates for common carriers and contract carriers, including matters of rate reasonableness and rate discrimination; railroad construction and abandonment matters, including construction of new lines, the removal of rail lines from the national rail network, and the discontinuation of railroad facilities such as agency stations; access of one rail carrier across or over the tracks of another carrier or to another carrier's terminal facilities, including portions of the main-line track; and line crossing arrangements where one railroad's right-of-way physically blocks the access of another railroad to a particular shipper or destination.

The FRSA and FRSA provide that railroad safety laws should be nationally uniform to the extent practicable, so these acts preempt state laws relating to railroad safety. Under the FRSA, state regulation of locomotive and rolling stock equipment standards, train crews and their qualifications, train speed restrictions, restrictions on the amount of time that trains can obstruct traffic at crossings, and train horn requirements have been, or may be, found to be preempted under federal law.

The ICCTA and FRSA do not preempt all state efforts to regulate railroads. States retain certain "police powers" despite the broad scope of exclusive federal railroad regulation. With certain exceptions, state regulation of railroad-highway crossing safety is generally not preempted. State laws are generally not preempted where they do not frustrate the federal scheme governing the construction, acquisition, or operation of railroad tracks or facilities or railroad safety and can be

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applied without interfering with federal law. Courts typically resolve issues of federal preemption on a fact-specific, case-by-case basis.

STATE REGULATION OF RAILROADS

In this state, the Office of Commissioner of Railroads (OCR), attached to the Public Service Commission (PSC), and the Wisconsin Department of Transportation (DOT) both have some authority over railroad operations and railroad safety in the state, but most of the state's regulatory authority over railroads resides with OCR, which is generally charged with receiving complaints, conducting hearings, and entering orders related to railroad operations and safety. DOT also has certain investigative duties with respect to OCR proceedings, as well as additional responsibilities related to development of rail transportation infrastructure and use of abandoned railroad rights-of-way. ✓

This bill repeals many provisions of state law relating to, and eliminates the authority of OCR with respect to, economic and safety regulation of railroads that may be inconsistent with, and therefore preempted by, federal law, but retains these provisions in a more limited application to water carriers. The bill also modernizes certain provisions of state law by repealing obsolete provisions and updating other provisions.

ECONOMIC REGULATION

The bill repeals the following provisions of current state law related to economic regulation of railroads, which might be found to be inconsistent with, and therefore preempted by, federal law, but retains these provisions to the extent they also apply to water carriers:

1. Providing OCR authority over railroad rates and charges, pricing discrimination or preferences, and adequacy of service.
2. Providing OCR authority to receive complaints that a railroad's rate, fare, charge, classification, practice, or service in connection with the railroad's transportation of persons or property is unreasonable or unjustly discriminatory or that service is inadequate, to direct DOT to investigate these complaints, and to hold hearings and order a reasonable rate, fare, charge, classification, practice, or service in lieu of that found to be unreasonable or unjustly discriminatory or inadequate. However, the bill entirely eliminates, for water carriers too, certain provisions relating to OCR's authority to apportion joint rates.
3. Requiring every railroad to furnish reasonably adequate service and facilities, and requiring the charges for the transportation of passengers or property or for any related service, including receiving, delivering, storing, or handling property, to be reasonable and just, and providing for OCR's authority to receive complaints and hold hearings on these matters and to determine if charges are unreasonable or unjustly discriminatory. However, the bill entirely eliminates, for water carriers too, certain provisions relating to OCR's authority over joint rates, fares, or charges.
4. Prohibiting rebates, concessions, or discrimination with respect to the transportation of property or any related service under which the property is transported at a rate less than the tariff rate.

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5. Providing OCR authority to fix the time for filing railroad schedules (rate tariffs) and to prescribe forms for these schedules.

6. Requiring railroads to deliver to OCR copies of all contracts with other railroads or shippers that relate to the transportation of persons or property or any related service, if required by OCR.

7. Requiring all freight tariffs issued by any railroad relating to interstate traffic through this state to be filed with OCR and authorizing OCR to investigate all freight rates on interstate traffic affecting this state and, if they are excessive or discriminatory, allowing OCR to petition the ICC for relief.

8. Authorizing OCR to prescribe rules related to charges and operations of public elevators and warehouses on railroad grounds, and related to the furnishing of cars to shippers, the moving, loading or unloading, and weighing of cars and freight, and the testing of railroad weights and scales.

9. Requiring a common carrier receiving property for intrastate transportation to issue a bill of lading, making the carrier liable for loss of or injury to the property, and giving rights to the holder of the bill of lading.

10. Requiring OCR to gather certain financial information from railroads and include the information in a report.

11. Authorizing OCR to direct DOT to investigate complaints that railroad charges for the transportation of property or for any related service, including storage charges, are erroneous, illegal, unusual, or exorbitant, and to hold a hearing, determine what would have been a reasonable rate or charge, and order a refund.

12. Allowing a person who ships property by railroad to, within 3 years after the delivery of the property, submit to OCR expense bills or receipts showing charges paid for the transportation so that DOT may examine them to determine the correctness of weights, rates, and charges indicated on the bills or receipts and, if OCR finds any weights, rates, or charges to be incorrect, authorizing OCR to order the railroad in error to refund any over or excessive charges paid.

Current law imposes specific requirements on the issuance of securities by public service corporations, which are defined to include railroads. OCR is authorized to control the issuance of, and impose special restrictions on, railroad corporation securities, including stock and debt instruments. OCR must approve issuance of railroad securities, may determine their number, character, purpose, and issuing value, and may impose other restrictions. The ICCTA repealed federal authority previously granted to the ICC to approve railroad issuance of securities and assumption of liabilities, although exclusive federal authority still exists with respect to certain transactions, including mergers and acquisitions, between railroads. This bill excludes railroads from the definition of public service corporation for these purposes, while retaining water carriers in the definition, thereby eliminating these specific requirements as applied to railroads.

~~CONSTRUCTION AND FACILITIES REGULATION~~

The bill repeals the following provisions of current state law related to regulation of railroad construction and facilities, which might be found to be inconsistent with, and therefore preempted by, federal law, but retains these provisions to the extent they also apply to water carriers:

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1. Prohibiting a railroad from abandoning a station, removing a depot, or withdrawing agency service without obtaining approval from OCR.

2. Imposing requirements related to, and providing OCR authority over, industrial spur tracks. However, the bill retains OCR's authority to order removal of tracks that have been abandoned but physically remain in place.

3. Prohibiting a railroad from removing, relocating, or closing its repair and maintenance shops or terminals without the consent of OCR, after a public hearing. That consent may not be given if the removal, relocation, or closure is not in the public interest or is unreasonable or unfair to railroad employees.

3 - 4. Requiring railroads to keep and maintain adequate and suitable depots, buildings, switches, and sidetracks for freight transported by the railroads.

4 - 5. Requiring railroads to provide and maintain adequate passenger depots meeting certain standards for amenities, comfort, and hours of service.

5 - 6. Requiring multiple railroads operating in the same municipality to attempt to maintain joint passenger depots, and giving OCR authority to order railroads to construct, maintain, and operate union passenger depots.

6 - 7. Requiring railroads to provide reasonable facilities for the interchange of passenger and freight traffic, and to transfer or switch without unreasonable delay or discrimination freight or cars, between their respective lines.

8. Providing for OCR authority over the requirement that every railroad construct and maintain its tracks, bridges, and line structures in a reasonably adequate and safe manner, and for OCR to direct DOT to investigate complaints and, upon hearing, if OCR determines that any railroad track or structure is inadequate or unsafe for the operation of the railroad, to order the railroad to reconstruct or repair the inadequate or unsafe track or structure. However, the bill allows OCR to participate in federal track inspection programs, including the certification of OCR staff for track inspection under federal law. The bill also retains the current law requirement that railroads construct and maintain their tracks, bridges, and line structures in a reasonably adequate and safe manner, as well as the current law requirement that railroads adopt reasonably adequate safety measures and install, operate, and maintain reasonably adequate safety devices for the protection of life and property, but qualifies these requirements by limiting them to the extent that they are consistent with federal law.

7 - 9. Providing that, whenever a railroad proposes to cross or join its track with another railroad track, OCR must determine, after a hearing, whether the surface road of the proposed track is to be above, below or at grade of any tracks proposed to be crossed, and requiring OCR to fix the proportion of the expense of the crossing or joining to be paid, respectively, by the owners of the tracks.

8 - 10. Requiring every railroad to transport grain at current rates to an elevator, warehouse, or mill under specified circumstances.

9 - 11. Requiring railroads to allow siting of certain facilities for elevators or warehouses associated with the transportation of property by railroad, and providing OCR authority over siting, rates, and operations of these elevator and warehouse facilities.

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10 e
12. Requiring railroads to, when possible and under certain conditions, furnish, without discriminating between shippers or places, suitable cars for the transportation of freight.

11 9 13. Requiring OCR to gather certain cost data related to railroad construction and railroad equipment and include the information in a report.

The bill also makes substantive modifications to modernize current law in the following ways:

1. The bill eliminates obsolete provisions related to a railroad's authority to move a highway in constructing a railroad over or across a highway.

2. Current law imposes certain specifications related to wires strung over railroads prior to August 1, 1949, and requires wires strung over any railroad on or after August 1, 1949 to be strung in such a way as to meet requirements of the Wisconsin state electrical code. The bill provides that these requirements do not apply to the extent they are inconsistent with federal law.

SAFETY REGULATION

The bill repeals the following provisions of current state law related to railroad safety, which might be found to be inconsistent with, and therefore preempted by, federal law, but retains these provisions to the extent they also apply to water carriers:

1. Providing for OCR review of petitions asserting that a railroad-highway crossing is dangerous to human life and that public safety requires setting a maximum train speed at the crossing, and for OCR's authority to hold a hearing and order a maximum train speed for the crossing and installation of a stop sign at the crossing. *Keep*

2. Prohibiting a train conductor, engineer, or brakeman from stopping or leaving a railroad train, locomotive, or car on or across a highway crossing outside of a city for more than 10 minutes.

3. Requiring railroad trains or locomotives to sound the whistle or horn 320 feet from a railroad-highway grade crossing outside the limits of a municipality and to ring the engine bell continuously from that point until the crossing is reached, and allowing OCR to order that these requirements be withheld at any crossing. *within specified distances of*

4. Requiring railroad trains or locomotives to ring the engine bell continuously within 330 feet of a railroad-highway grade crossing within any city or village, and until the crossing is reached, except where gates are operated or a flagman is stationed. However, the bill recognizes the duty of railroad trains and locomotives to comply with federal law.

5. Imposing requirements related to the qualifications of railroad conductors and flagmen.

6. Imposing equipment and safety requirements for cabooses and engines. *Keep*
However, the bill requires railroads to operate and maintain their equipment and rolling stock in a reasonably adequate and safe manner consistent with federal law, and authorizes OCR to participate in federal equipment inspection programs, including the certification of OCR staff for inspection under federal law.

but retaining such requirements with respect to

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7. Imposing lighting requirements for track cars operated at night, visibility marking requirements for engines and cars built in this state, and windshield and canopy requirements for track cars operated in this state.

8. Requiring that locomotives be equipped with spark arresters meeting standards of the Department of Natural Resources (DNR), providing DNR authority to remove from service non-complying locomotives, and providing OCR authority to make determinations related to spark arresters and similar devices.

9. Providing for complaints to OCR, and OCR hearings and orders, concerning the safety of railroad bridges lacking walks and railings.

10. Providing for complaints to OCR, or action on OCR's own initiative, that a bridge erected over a stream intersecting a highway upon which a railway is constructed and operated is unsafe and dangerous to travelers and that public safety requires the repair, alteration, or reconstruction (including in a different location) of the bridge, and for OCR's authority to hold hearings and to order repair, alteration, or reconstruction of the bridge.

6. 11. Requiring railroads to maintain suitable telltales (arrangements of long strips of rope, wire, or other material hanging from a bar over railroad tracks to warn of an upcoming low overhead structure) wherever any part of an overhead structure is less than 23 feet above the top of a rail, except where OCR authorizes an exception. However, the bill requires telltales to the extent required under federal law and authorizes OCR, if it finds that the absence of a telltale would create an unreasonable risk of harm to the public or a railroad employee on a railroad not under the jurisdiction of the STB or FRA, to order the installation of a telltale.

7. 12. Requiring railroads to report to OCR all collisions, derailments, or other accidents resulting in injury to persons, equipment, or tracks, and authorizing OCR to issue rules concerning the reporting of accidents and, if public interests require, cause an investigation of any accident. However, the bill requires railroads to submit to OCR a copy of any ~~monthly~~ accident or injury report provided by the railroad to the applicable federal authority.

The bill also makes substantive modifications to modernize current law in the following ways:

1. The bill prohibits any person (not just a person under the age of 17, as provided under current law), other than a railroad employee, from getting on or off a moving railroad car or train.

2. Under current law, a railroad must allow a specified amount of horizontal clearance, which varies depending on the circumstances, between any building or platform and the tracks. OCR may exempt any building or platform if it finds that such an exemption is in the public interest and will not imperil life or limb. The bill allows OCR to provide such an exemption without a hearing if no objection is made after notice is given.

3. Under current law, upon petition to determine whether a public highway and railroad grade crossing protects and promotes public safety, OCR may investigate and issue an appropriate order, after a hearing or without a hearing if no objection is made. OCR must determine whether the existing warning devices at the crossing are adequate to protect and promote public safety. If OCR determines that protection

Insert
ANAL-B

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is not adequate, it may order suitable crossing protection or safety devices at specific locations at the crossing. State regulation of railroad-highway crossing safety is generally not preempted, although preemption may occur if federal funds participate in the installation of crossing warning devices and the devices are subject to the approval of the Federal Highway Administration. The bill authorizes OCR to participate in federal signal inspection programs, including the certification of office staff for signal inspection under federal law.

4. Current law requires railroads to maintain "Railroad Crossing" signs on each side of the tracks wherever their tracks cross public highways or streets. The bill modernizes terms used to refer to the "Railroad Crossing" sign, commonly known as a crossbuck sign, and requires that these signs conform with the Manual on Uniform Traffic Control Devices adopted by DOT.

The bill also creates a new provision specifically recognizing OCR's regulatory jurisdiction over railroad safety practices related to railroad equipment, facilities, rolling stock, and operations to the extent consistent with federal law, and authorizing OCR to participate in federal investigative activities necessary to enforce the federal safety regulations that apply to railroad equipment, facilities, rolling stock, and operations in this state.

ADDITIONAL PROVISIONS

The bill changes penalties for the following offenses from imposition of a fine (a criminal penalty) or incarceration or both to imposition of a forfeiture (a civil penalty):

1. Getting on or off a moving railroad car or train.
2. Horizontal clearance violations by a railroad.
3. Trespassing on a railroad.
4. Receiving a rebate, concession, or discrimination with respect to water carrier transportation of property or any related service under which the property is transported at a rate less than the tariff rate.
5. Certain offenses related to the furnishing, installation, placement, and maintenance of advance warning signs near railroad-highway grade crossings. However, the bill does not change the penalty for damaging or interfering with these signs.
6. Willfully failing to sound an engine ^{bell} ~~horn~~ at a grade crossing.

The bill makes additional modifications to current state law in the following ways:

1. Under current law, "railroad" is defined to include common carriers of property by water which operate between fixed end points. Rather than include a common carrier of property by water within the definition of a railroad, the bill removes a water carrier from this definition and defines a "water carrier" to mean a common carrier of property by water that operates between fixed end points, but not including a water carrier under common control with a railroad when transporting property for continuous carriage or shipment.

2. Under current law, no member of the PSC (to which OCR is attached) may have a financial interest in a railroad or public utility. Also, the commissioner of railroads may not have a financial interest in a railroad. This bill also prohibits any

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member of the PSC or the commissioner of railroads from having a financial interest in a water carrier.

7 3. The bill provides for OCR ~~authority~~ in various circumstances where under current law OCR requests DOT to conduct an investigation, to investigate the matter itself. *and eliminates DOT's duty to investigate at OCR's request*

7 4. The bill specifically provides for OCR authority to receive complaints, direct investigation by DOT, and hold a hearing on the complaint with respect to any railroad practice or activity under OCR's regulatory jurisdiction.

4 5. Current law provides that state laws apply to railroads in interstate commerce only to the extent permitted by the federal constitution and federal laws. The bill clarifies that all state laws relating to railroads apply only to the extent they are not contrary to or inconsistent with any federal statute or regulation, or order of an applicable federal agency, or the federal constitution.

Insert ANAL-C
For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 15.79 of the statutes is amended to read:

2 **15.79 Public service commission; creation.** There is created a public
3 service commission. No member of the commission may have a financial interest in
4 a railroad, water carrier, or public utility. If any member voluntarily becomes so
5 interested, the member's office shall become vacant. If the member involuntarily
6 becomes so interested, the member's office shall become vacant unless the member
7 divests himself or herself of the interest within a reasonable time. No commissioner
8 may serve on or under any committee of a political party. Each commissioner shall
9 hold office until a successor is appointed and qualified.

10 SECTION 2. 15.795 (1) of the statutes is amended to read:

11 15.795 (1) OFFICE OF THE COMMISSIONER OF RAILROADS. There is created an office
12 of the commissioner of railroads which is attached to the public service commission
13 under s. 15.03, provided that s. 85.02 (1) does not apply to the office of the

**2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4796/lins
ARG:.....

INSERT ANAL-A:

3. The bill repeals provisions relating to railroad authority with respect to certain railroad lands. ✓

INSERT ANAL-B:

3. ~~5~~ 6. The bill repeals an exception to the general prohibition against walking on railroad tracks for a person who walks directly across the tracks.

INSERT ANAL-C:

5. ~~6~~ 6. The bill provides for application of certain current law provisions relating to removing, relocating, or closing repair and maintenance shops or terminals to all railroads, not just steam railroads. ✓

6. ~~7~~ 7. The bill eliminates DOT authority to request OCR to hold hearings and advise on railroad-related plans, policies, and programs and to request certain OCR review of DOT determinations. ✓

analysis line space

Northrop, Lori

From: Phillips, Matt
Sent: Monday, March 06, 2006 9:24 AM
To: LRB.Legal
Subject: Draft Review: LRB 05-4796/1 Topic: Changes related to railroad regulation

Please Jacket LRB 05-4796/1 for the SENATE.